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DEPARTMENT OF STATE

Memorandum of Conversation

DATE: January 29, 1970

SUBJECT: Protective Security for Soviet Establishments

PARTICIPANTS: John Strauss, U.S. Attorney's Office, Washington, D.C.
Samuel G. Wise, OIC, Bilateral Affairs, EUR/SOV
Norman E. Terrell, EUR/SOV
Steven E. Steiner, EUR/SOV

COPIES TO: EUR - Mr. Swank
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O/SY/PrS - Mr. Bujac
Embassy Moscow

S - Mr. Okun
U - Mr. Abramowitz
S/CPR - Mr. Whitehead
L/EUR - Mr. Brower
USUN - Mr. Glennon

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Background

John Strauss, an attorney with the U.S. Attorney's Office in Washington (tel. 629-4247) called SOV on January 23 to inform us that charges were being dropped against the young man and woman arrested outside the Soviet Embassy on January 22. The youths, both students at American University, tried to nail a plaque to a tree in front of the Embassy, which stated that the tree was planted in memory of "3.5 million oppressed Soviet Jewish people". When they refused a police officer's request to leave, they were arrested and charged with "interference with diplomatic premises"; this charge is related to the local statute forbidding people to "congregate" within 500 feet of an embassy.

Mr. Strauss stated that the charges were being dropped because: 1) it would be difficult to establish that two people can "congregate", and 2) the statute is presently under constitutional challenge in another case. Strauss also stated that because of this challenge to the statute, proceedings against 19 persons who handcuffed themselves to the Soviet Embassy gate on December 1 were being postponed to April.

Strauss visited SOV on January 29 in order to discuss in greater detail the question of protecting Soviet establishments in this country. The conversation covered the following:

EUR/SOV/SES Steiner:ama 2/5/70

(Drafting Office and Officer)

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Cases Requiring Complainants

Mr. Wise stated that we are particularly interested in ascertaining when it is necessary for a complainant to appear in court. Strauss explained that this is required when private property is damaged or when there is unlawful entry. This includes unlawful entry into diplomatic premises, as in the case of the two drunks who tried to scale the Soviet Embassy wall last August. When the Soviets were informed last fall by the U.S. Attorney's Office that the Soviet duty officer who witnessed the attempted break-in would be required to testify in court that there was "no permission to enter", the Embassy dropped the charges. Strauss explained that the Attorney's Office could not itself press charges, for lack of permission to enter cannot be presumed. Similarly, in cases like the Jewish Defense League's assault on TASS and Aeroflot offices in New York, a complainant is necessary to establish ownership of the damaged property.

Mr. Wise pointed out that there seem to be two essential problems which make the Soviets reluctant to appear as complainants: 1) they do not wish to become engaged in courtroom polemics with anti-Soviet groups, and 2) when they do agree to appear, they are frequently faced with continuing postponements obtained by the defense. Strauss commented that delaying is a usual defense tactic, which can be stopped only if the judge refuses to grant further postponements.

Mr. Wise asked whether it would be possible for the Soviets to make written depositions in such cases. Strauss replied that this might be possible, but that the Soviet complainant may be obliged to submit to questioning by defense lawyers. Mr. Wise stated that this might not present a problem, provided that the confrontations were private. Mr. Strauss promised to investigate this question.

"Interference with Diplomatic Premises"

Mr. Strauss explained that the statute prohibiting "interference with diplomatic premises" has two components: 1) a prohibition against using placards, signs etc. "to bring into disrepute" the diplomatic representatives of a foreign country, and 2) a prohibition against "congregating" within 500 feet of a diplomatic mission. Strauss stated that bringing charges under the latter is particularly easy, for the prosecutor need show only that the establishment in question is a diplomatic premise. Charges under the "disrepute" clause are brought less frequently and may require at least a witness in court, though not necessarily a complainant.

Mr. Strauss stated that the charges against the 19 youths arrested on December 1 for handcuffing themselves to the gate of the Soviet Embassy will be brought under this statute. He felt that the Attorney's Office has a good case against the defendants under either the "disrepute" or 500 foot clause. Although the defense plans to question the constitutionality of the statute, the prosecution does not intend to postpone the case beyond April even if no decision has been rendered on the Statute's constitutionality.

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Despite the strong case against the defendants, however, Strauss said that it is extremely unlikely that a finding of guilty will bring a jail sentence. Mr. Wise expressed the hope that if the defendants are let off lightly, it will be done without extensive publicity. Mr. Strauss replied that it is difficult to avoid publicity in those cases, for the court sessions are open.

Mr. Strauss stated that the Metropolitan Police will continue to make arrests for "interference with diplomatic premises" while the statute is under constitutional challenge. The question of whether to prosecute such a case during this period, however, must be decided by the judge. If the statute is found unconstitutional, the police probably will have to bring disorderly conduct charges in such cases.

Protection for Soviet Photo Exhibit

Mr. Wise pointed out that an official (US-USSR Exchanges Program) Soviet photoexhibit will be on display at the Sheraton Park Hotel from February 17-March 5 in the first part of a long U.S. tour. He expressed our concern for the safety and smooth operation of the exhibits, particularly in view of the recent incidents involving the U.S. tour of another component of the exchanges program, the Moscow Philharmonic. He asked what charges could be brought against persons who interfered with the exhibit. Mr. Strauss replied that disorderly conduct would probably be the best bet, for a charge of unlawful entry would require the management of the hotel to appear as complainant. (It is possible that the Sheraton Park, like Constitution Hall, would refuse to press charges against Jewish demonstrators.) Strauss stated that it would also be difficult to establish that demonstrators at a Soviet exhibit are attempting to bring into disrepute Soviet diplomatic representatives. Mr. Steiner asked whether the police could establish a 500-foot cordon around the exhibit when the Soviet Ambassador is present, as they intimated they would have done had the Ambassador attended the Moscow Philharmonic performance at Constitution Hall. Mr. Strauss replied that this might have difficulty standing in court.

Mr. Wise asked whether any preventive action could be taken when there is an advance report (e.g. from the FBI) that there may be trouble at a Soviet exhibit or performance. Mr. Strauss said that he would look into this possibility. Mr. Terrell asked whether a court could enjoin in advance any actions which might interfere with an exhibit or performance. Mr. Strauss replied that this is unlikely, for criminal conduct cannot be enjoined. He stated that it might be possible for the Sheraton Park to identify in advance any individuals who are likely to cause trouble at the photo exhibit and to seek a civil injunction prohibiting these persons from entering the hotel. He stressed, however, that such an injunction could be brought only against specified individuals, not against groups.

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